



November 19, 2014

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Re: Continued opposition to the Office of Planning and Research Senate Bill (SB) 743 Draft Guidelines

Dear Mr. Calfee:

Orange County Business Council (OCBC) understands the critical role of the building and development industry in supporting California's job base and providing sufficient housing for our growing population. OCBC also understands the need to balance development with policies that promote smart, sustainable growth and reduce greenhouse gas emissions. However, we are very sensitive to the fact that the California Environmental Quality Act (CEQA) has been abused in courtrooms for many years in the name of environmental protection. **OCBC contends that the Office of Planning and Research (OPR) Senate Bill (SB) 743 Guideline Revision Proposal (Proposal) will further exacerbate the litigation challenges associated with CEQA.**

Therefore, OCBC submits the following comments on OPR's Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743, dated September 6, 2014.

Instead of streamlining the CEQA process, the Proposal would require additional studies of vehicle miles traveled (VMT) while still requiring level of service (LOS) analysis. Specifically, five existing requirements of the California Government Code and CEQA could be interpreted by the California courts to require cities and counties to prepare traffic studies using an LOS analysis methodology, even if the Proposal is adopted as a final guideline revision in its present form. These requirements include:

1. General plan LOS standards or goals written into the plan text;
2. General plan "correlation" requirements in Government Code Section 65302;
3. CEQA "base data" requirements to analyze noise, air quality and traffic safety;

4. CEQA Guideline Section 15125(d); and
5. Analysis of a project's direct or cumulative impacts on transit systems which utilize the same streets or cross street rights-of-way.

General Plan LOS Standards or Goals Written Into the Plan Text

The Proposal makes it clear that it does not preempt existing requirements in city or county general plans that may require that new projects be consistent with proposed or adopted LOS standards in their general plans. Case law has established that a government agency must perform some form of analysis to determine how the traffic generated by new or authorized development under the standards of the Land Use Element will be handled by the streets, roadways, and intersections contemplated and planned for in the Circulation Element. Typically this has meant a traffic study which looks at the capacity of the roadways and determines the appropriate LOS. Without such a LOS study, the city or county would lack the factual basis for determining whether or not a specific development project was "consistent" with the city or county's general plan. While OPR acknowledges that these requirements written into the general plans would still require that LOS studies be prepared, OPR indicates in the "Frequently Asked Questions Regarding the Preliminary Discussion Draft of Guidelines Implementing Senate Bill 743" that such a LOS study does not need to be included with the environmental document itself, which leaves a significant question as to whether the California courts will agree with such a conclusion.

General Plan "Correlation" Requirement in Government Code Section 65302

There is a second basis for concluding that general plan requirements may still require the preparation of LOS studies, even if the Proposal is adopted, which OPR may not have specifically considered. OPR's comments do not address those development projects which include a land use amendment to a city or county general plan. Many, if not most large master planned projects (and even some smaller infill projects) involve amendments to the applicable general plan. Even where the applicable general plan does not include any LOS requirements or goals, the process of amending a general plan may require that a city or county prepare an LOS study to determine how the newly amended land use element would interrelate with the applicable circulation element and circulation facilities in the general plan (Government Code Section 65302). Simply calculating the VMTs that a new development would generate would not appear to provide any analysis of the correlation between the circulation element and the land use element. For example, the amount of VMTs would not provide information as to whether intersections and streets were adequately sized, located or configured to handle the volume of private vehicle and public/private transit vehicle traffic that would be generated or affected by traffic resulting from new development.

CEQA "Base Data" Requirements to Analyze Noise, Air Quality, and Traffic Safety

A third reason why an analysis of LOS resulting from a project may still be needed despite the Proposal, is the need to provide "base data" to be used in analyses of air quality, noise, safety, or any other impact associated with transportation according to Section 21099(b)(3). It is difficult to understand how an analysis can be conducted based solely on VMT without also performing some measure of traffic congestion and intersection performance against LOS to determine air emissions, noise, and safety resulting from traffic.

CEQA Guideline Section 15125(d)

A fourth reason why an LOS analysis may be needed under CEQA despite the Proposal is CEQA Guideline Section 15125(d), which would not be amended by the Proposal. Section 15125(d) requires that an EIR or other CEQA document analyze "any inconsistencies between the proposed project and applicable general plans" and other regional plans. Thus, if a city or county general plan contains a reference to LOS standards, or contains a "correlated" circulation element, it is difficult to understand how the CEQA document for a project can determine if a project is "consistent" with the general plan if there is no traffic study performed to examine how the project's traffic will impact any LOS standards in the general plan and any efforts to "correlate" the circulation element with the General Plan. Under this CEQA guideline 15125(d), the inconsistency must arguably be identified and disclosed in a CEQA document, even if the agency proposes to amend the General Plan to resolve the inconsistency. The land use plan inconsistency must also be identified and disclosed even if the agency determines that there is no significant adverse traffic impact, and even if SB 743 can be interpreted to allow an agency to use solely VMT to determine traffic impacts.

As a result, while the Frequently Asked Questions document for the Proposal states: "While traffic studies may be required for planning approvals, those studies will not be required to be part of the CEQA process," it is possible that a court could hold otherwise and determine that CEQA Guideline Section 15125(d) does continue to require that all inconsistencies with the applicable general plan be described and included in the CEQA document as part of the environmental setting and those inconsistencies can only be determined by performing a LOS traffic study.

Analysis of A Project's Direct or Cumulative Impacts on Transit Systems Which Utilize the Same Streets or Cross Street Rights-of-Way

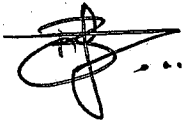
It would appear that one issue that would also have to be studied would be a project's impact on a street system to determine how it would affect the operation of an existing or expanded bus or rail transit system that would also use this street system. A key part of the functioning of the transit system would be based upon the LOS that would exist for transit vehicles using the same streets and

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crossing through the same intersections. A VMT analysis would not provide information on whether or how intersections and street segments would function with the added traffic and transit service associated with the proposed new development. It would seem likely that an LOS analysis would also have to be conducted which considered the combined use of private vehicles and transit vehicles/stops/stations with the roadway system. Therefore, it is not clear whether SB 743 or the proposed guidelines would provide any legal protection for projects which only perform a VMT analysis but do not provide LOS information needed to assess impacts on bus and rail transit systems.

For these reasons, OCBC strongly opposes the SB 743 Guideline Revision Proposal. OCBC asserts that the proposed guideline amendments will lead to confusion and increasing litigation risk. We respectfully ask that you table the Proposal and work with stakeholders to develop a more comprehensive CEQA modernization strategy. Thank you for your thoughtful consideration.

Sincerely,

A handwritten signature in black ink, appearing to be "Bryan Starr", with a stylized flourish at the end.

Bryan Starr
Senior Vice President of Government Affairs
BS:la